facie presumption is that the killing was wilful, deliberate and premeditated, and the burden of proving extenuating circumstances is cast upon the prisoner.

4. APPEAL AND ERROR—*Exceptions must point out errors.* This court will not consider an exception to the action of a trial court in giving instructions of its own in lieu of those offered by a party, unless the exception points out the error in the action of the trial court.

5. JURORS — *Objection to competency after verdict—Waiver.* An objection to a juror because he is under the age of twenty-one years comes too late after verdict. The objection, though good if raised in time, must be deemed to have been waived.

6. HOMICIDE—*Drunkenness as an excuse for crime.* If an accused was not so much under the influence of liquor at the time of the commission of an offence as not to know what he was doing, or not to know right from wrong, it is immaterial that he has been accustomed to drink heavily for years, and was drinking at that time.

ROGERS AND OTHERS v. PATTIE, TRUSTEE.—Decided at Richmond, December 1, 1898.—*Buchanan*, J. Absent, *Riely* and *Cardwell*, JJ:

1. MUTUAL MISTAKE—*Relief in equity—Executory and executed contracts.* A mutual mistake of parties in an executory contract in a matter which is part of the essence of the contract and of the substance of the thing contracted for will be relieved against in a court of equity, and may be good ground for rescinding the contract, or of specifically executing it upon equitable terms of compensation according to circumstances. But where the contract has been executed and rescission is asked on the ground of mutual mistake, the mistake must be plain and palpable, and must affect the very substance of the thing contracted for, and not merely a material part of such substance. The loss of a part of a lot of land bought for speculation, and which has been conveyed to the purchaser is ground for compensation at his instance, but not for rescission.

2. MUTUAL MISTAKE—*Remedies at law and in equity.* A vendee of real estate may go into a court of equity on the ground of mutual mistake and recover compensation for land lost, notwithstanding he has the right to proceed at law on his covenants for title.

ROANOKE STREET RAILWAY CO. AND OTHERS v. HICKS, TRUSTEE, AND OTHERS.—Decided at Richmond, December 1, 1898.—*Harrison*, J. Absent, *Riely*, J:

1. CHANCERY PLEADING—*Discovery—Corporations—Who must be parties—Complete relief.* If a party is properly before a court of equity for a discovery, the court having possession of the subject will proceed to decide the case, unless the discovery is sought and obtained to be used in a court of law. But some one must be made a defendant who can answer under oath. A corporation answers under its corporate seal, and if it is the sole defendant to a bill for discovery only the bill will be dismissed. The usual and proper method is to make some officer of the corporation who knows the facts sought to be elicited a co-defendant with the corporation.

2. CHANCERY PRACTICE—*Specific performance—Impossibility of performance.* A

bill in equity will not lie to compel the delivery of bonds secured by one mortgage when the contract set out in the bill and sought to be enforced shows that the bonds contracted for were secured by a prior mortgage which has been cancelled, and that the bonds secured thereby have been destroyed, thus rendering specific performance impossible.

3. CHANCERY PRACTICE—*Administration of trust—Recitals in mortgage or deed of trust to secure bonds.* A recital in a deed of trust or mortgage to secure an issue of bonds by a corporation that the money derived from the sale of the bonds is to be used to pay the debts of the corporation creates no trust in favor of any creditor of the corporation either to deliver any of the bonds or pay over the proceeds thereof to him. Nor does the stipulation of the mortgagee or trustee to deliver a certain number of said bonds to the corporations "to be applied to the payment of its outstanding indebtedness and to such other uses as the board of directors shall determine" create any trust in the corporation which it can be called upon to administer in a court of equity.

DRIVER v. HARTMAN.—Decided at Richmond, December 6, 1898. *By the court.* Absent, *Riely* and *Cardwell*, JJ:

1. APPEAL AND ERROR—*Exclusion of evidence by trial court—Bill of exceptions—What must be shown.* The action of a trial court in refusing to allow a witness to answer certain questions will not be considered by this court unless the bill of exception shows what the exceptor expected or proposed to prove by the witness.

HAFFNER'S ADM'R v. CHESAPEAKE & OHIO RAILWAY CO.—Decided at Richmond, December 7, 1898.—*Keith*, P. Absent, *Riely* and *Cardwell*, JJ:

1. RETRIAL DE NOVO—*New evidence—Different judgment—Same evidence—Res judicata.* On a retrial *de novo* a party may introduce new evidence and establish an entirely different state of facts from that shown on the former trial, and to conform its judgment to the changed state of facts, is no violation of principle in a court even if thereby it sets aside its former decision as inapplicable and adopts a new one suited to the new phase of the controversy. But where the evidence is substantially identical on the two trials, and the relations of the parties thereto the same, as in the case at bar, the judgment on the first trial is conclusive.

2. RAILROADS—*Overhead bridges—Negligence—Contributory negligence.* It is negligence for a railroad company to operate its road with an overhead bridge only twenty-eight and a half inches above the tops of its cars, but if an employee knows or ought to know of the dangerous character of the bridge, and fails to use ordinary care to protect himself, in consequence of which he is injured, he is guilty of contributory negligence, and cannot recover for the injury.

3. RAILROADS—*Signal for brakes—Emergency.* The mere signal to put on brakes when approaching an overhead bridge which is very low, does not constitute such an emergency as to render a brakeman irresponsible for his acts.